

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

IN THE MARION COUNTY SUPERIOR COURT
CAUSE NO.

49D 069912CP001775

STATE OF INDIANA,)
)
Plaintiff,)

v.)

VERNON EVERSOLE and)
BERLIN EVERSOLE, individually)
and doing business as)
EVERSOLE CONSTRUCTION,)

Defendants)

FILED

DEC 15 1999

Sam M. Taylor
CLERK OF THE
MARION CIRCUIT COURT

COMPLAINT FOR INJUNCTION AND DAMAGES

The State of Indiana, by Attorney General Jeffrey A. Modisett and Deputy Attorneys General Roy P. Coffey and Robert C. Neary, petitions the court pursuant to the Indiana Deceptive Consumer Sales Act, Ind. Code §24-5-0.5-1 et seq. for injunctive relief, consumer restitution, civil penalties, investigative costs and other relief.

PARTIES

1. The Defendants, Vernon and Berlin Eversole, are residents of Marion County, Indiana. At all relevant times, Defendants were engaged in or solicited home improvement contracts, individually and on behalf of Eversole Construction.

FACTS

2. At least since December 16, 1997, Defendants Vernon Eversole and Berlin Eversole have acted as home improvement suppliers by engaging in or soliciting home improvement contracts.

3. On or around December 16, 1997, Defendant Vernon Eversole entered into a

Plf's Ex	1
Witness	Berlin G. Eversole
Date	5/22/00 RJS

home improvement contract with Donna McGlaughlin for the construction of a 24 foot by 24 foot garage, including electrical wiring, for a total contract price of Eight Thousand Two Hundred Dollars (\$8,200.00). A true and accurate copy of the contract is attached, incorporated by reference, and marked Exhibit "A".

4. On or about December 31, 1997, Defendant Vernon Eversole informed Mrs. McGlaughlin that he was unable to build the 24 foot by 24 foot garage because her property was on a flood plain, and modified the contract to provide for construction of a 20 foot by 20 foot garage with a built-up floor at the previously agreed contract price. A true and accurate copy of the modified contract is attached, incorporated by reference, and marked Exhibit "B".

5. Defendant Vernon Eversole failed to include the following information in the home improvement contracts entered into with Mrs. McGlaughlin:

- (a) the address of the home improvement supplier;
- (b) specifications for the home improvement or a statement that the specifications will be provided to the consumer before commencing any work and that the home improvement contract is subject to the consumer's separate written and dated approval of the specifications;
- (c) the approximate starting and completion dates of the home improvements;
- (d) signature lines for the home improvement supplier or the supplier's agent and for each consumer who is to be a party to the home improvement contract with a legible printed or a typed version of that person's name placed directly after or below the signature.

6. At the time Defendant Vernon Eversole solicited and entered into the McGlaughlin contract, he was not licensed by Marion County, Indiana, to perform work as an electrical contractor.

7. On or around December 16, 1997, Defendant Berlin Eversole, acting as an owner and on behalf of Eversole Construction, entered into an oral home improvement contract with

Mrs. McGlaughlin for the installation of a concrete driveway at her residence at a cost of one thousand one hundred dollars (\$1,100.00).

8. Defendant Berlin Eversole failed to provide Mrs. McGlaughlin with a written home improvement contract containing the following information:

- (a) the address of the home improvement supplier;
- (b) the date the home improvement contract was submitted to the consumer;
- (c) specifications for the home improvement or a statement that the specifications will be provided to the consumer before commencing any work and that the home improvement contract is subject to the consumer's separate written and dated approval of the specifications;
- (d) the approximate starting and completion dates of the home improvements;
- (e) signature lines for the home improvement supplier or the supplier's agent and for each consumer who is to be a party to the home improvement contract with a legible printed or a typed version of that person's name placed directly after or below the signature.

9. Defendant Berlin Eversole did not agree unequivocally by written signature to all the terms of his home improvement contract with Mrs. McGlaughlin before receiving payment from Mrs. McGlaughlin.

10. On or around December 16 and December 30, 1997, Defendants represented to Mrs. McGlaughlin that the contract work would be performed in a substantial workmanlike manner.

11. In truth and in fact, the contract work performed by Defendants was not performed in a workmanlike manner in that the garage door was not flashed and the driveway was constructed at a higher level than the garage floor, which causes water to run into the garage, and the garage floor is not level, causing water to pool in certain areas of the garage.

12. Mrs. McGlaughlin paid Defendant Vernon Eversole a total of Eight Thousand Two Hundred Dollars (\$8,200.00) and Defendant Berlin Eversole a total of One Thousand One Hundred Dollars (\$1,100.00) for the garage and driveway construction.

COUNT I - VIOLATIONS OF THE HOME IMPROVEMENT CONTRACTS ACT

13. The transactions referred to in paragraphs 3, 4 and 7 above are home improvement contracts as defined by Ind. Code §24-5-11-4.

14. Defendants Vernon and Berlin Eversole are home improvement suppliers as defined by Ind. Code §24-5-11-6.

15. By failing to obtain a license to act as an electrical contractor from Marion County, Indiana, prior to commencing electrical work on the garage, Defendant Vernon Eversole violated the Home Improvement Contracts Act, Ind. Code §24-5-11-9.

16. By failing to provide completed home improvement contracts to Donna McGlaughlin before the contracts were signed by Mrs. McGlaughlin, Defendant Vernon Eversole violated the Indiana Home Improvement Contracts Act, Ind. Code §24-5-11-10.

17. By failing to include the information referred to in paragraph 5 above in the home improvement contracts entered into with Donna McGlaughlin, Defendant Vernon Eversole violated the Indiana Home Improvement Contracts Act, Ind. Code §24-5-11-10.

18. By failing to provide Donna McGlaughlin with a written home improvement contract containing the minimum required terms with respect to the driveway construction, Defendants violated the Indiana Home Improvement Contracts Act, Ind. Code §24-5-11-10.

19. By failing to agree unequivocally by written signature to all terms of the driveway contract prior to accepting payment from Mrs. McGlaughlin, Defendants violated the Home Improvement Contracts Act, Ind. Code §24-5-11-11.

20. By failing to give Mrs. McGlaughlin a fully executed written contract regarding the driveway construction, Defendants violated the Home Improvement Contracts Act, §24-5-11-12.

COUNT II - VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT

21. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 20 above.

22. The transactions referred to in paragraphs 3, 4, and 7 above are "consumer transactions" as defined by Ind. Code §24-5-0.5-2(a)(1).

23. Defendants are "supplier(s)" as defined by Ind. Code §24-5-0.5-2(a)(3).

24. The violation of the Indiana Home Improvement Contracts Act referred to in paragraphs 15 through 20 above constitute deceptive acts.

25. Defendant Vernon Eversole's solicitation and contracting to perform electrical work without a license required by law violated the Deceptive Consumer Sales Act, §24-5-0.5-10(1)(A) and (C).

26. Defendants' representations to Mrs. McGlaughlin that the garage and driveway would be constructed in a substantial workmanlike manner violated the Deceptive Consumer Sales Act by representing that the subject of a consumer transaction had performance, characteristics, or benefits it did not have which Defendants knew or should have known it did not have, in violation of Ind. Code §24-5-0.5-3(a)(1).

27. Defendants' representations to Mrs. McGlaughlin that the garage and driveway would be constructed in a substantial workmanlike manner violated the Deceptive Consumer Sales Act by representing that the subject of a consumer transaction was of a particular standard or quality, when it was not and Defendants knew or should have known it was not.

28. The misrepresentations and deceptive acts set forth above will continue and will cause irreparable injury unless Defendants are enjoined from engaging in further conduct that violates Ind. Code §24-5-11-1 et seq. and Ind. Code §24-5-0.5-1 et seq.

COUNT III - KNOWING AND INTENTIONAL VIOLATIONS OF
THE DECEPTIVE CONSUMER SALES ACT

29. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 28 above.

30. The misrepresentations and deceptive acts set forth above were committed by Defendants with actual knowledge and intent to deceive.

RELIEF

WHEREFORE, the Plaintiff, State of Indiana, requests the Court enter judgment against Defendants for a permanent injunction enjoining Defendants from:

a. in the course of entering into home improvement transactions, failing to provide to the consumer a completed home improvement contract which includes at a minimum the following:

(1) The name of the consumer and the address of the residential property that is the subject of the home improvement;

(2) The name and address of the home improvement supplier and each of the telephone numbers and names of any agent to whom consumer problems and inquiries can be directed;

(3) The date the home improvement contract was submitted to the consumer and any time limitation on the consumer's acceptance of the home improvement contract;

(4) A reasonably detailed description of the proposed home improvements;

(5) If the description required by Ind. Code §24-5-11-10(a)(4) does not include the specifications for the home improvement, a statement that the specifications will be provided to the consumer before commencing any work and that the home improvement contract is subject to the consumer's separate written and dated approval of the specifications;

(6) The approximate starting and completion date of the home improvements;

(7) A statement of any contingencies that would materially change the approximate completion date;

(8) The home improvement contract price; and

(9) Signature lines for the home improvement supplier or the supplier's agent and for each consumer who is to be a party to the home improvement contract with a legible printed or typed version of that person's name placed directly after or below the signature;

b. in the course of entering into home improvement transactions, failing to provide a completed home improvement contract to the consumer before it is signed by the consumer;

c. representing that the subject of a consumer transaction has performance, characteristics, or benefits it does not have which Defendants know or should reasonably know it does not have;

d. representing that the subject of a consumer transaction is of a particular standard, quality, or grade, if it is not and if Defendants know or should reasonably know that it is not

e. soliciting to engage in or engaging in a consumer transaction without a permit or other license required by law.

AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court enter judgment against Defendants for the following relief:

a. cancellation of contracts pursuant to Ind. Code §24-5-0.5-4(d);

- b. consumer restitution pursuant to Ind. Code §24-5-0.5-4(c)(2), for Donna McGlaughlin, in an amount to be determined at trial;
- c. costs pursuant to Ind. Code §24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;
- d. on Count III of the Plaintiff's Complaint, civil penalties pursuant to Ind. Code §24-5-0.5-4(g) for the Defendant's knowing violations of the Deceptive Consumer Sales Act, in the amount of five hundred dollars (\$500.00) per violation, payable to the State of Indiana;
- e. on Count III of the Plaintiff's Complaint, civil penalties pursuant to Ind. Code §24-5-0.5-8 for the Defendant's intentional violations of the Deceptive Consumer Sales Act, in the amount of five hundred dollars (\$500.00) per violation, payable to the State of Indiana;
- f. all other just and proper relief.

Respectfully submitted,

JEFFREY A. MODISSETT
Attorney General of Indiana
Atty. No. 14704-49

By: 

Robert C. Neary
Deputy Attorney General
Atty. No. 21758-49

By: 

Roy R. Coffey
Deputy Attorney General
Atty. No. 3930-29

Office of Attorney General
Indiana Government Center South
402 W Washington, 5th Floor
Indianapolis, IN 46204
Telephone: (317) 233-3976
RCN/228700

PROPOSAL

Emersole Construction

No

Date

Sheet No.

Proposal Submitted To:

Name DONNA M. MCGLAUGHLIN
 Street 1638 E. SOUTHERN AVE.
 City INDIPS. State IND.
 Phone 787-9071

Work To Be Performed At:

Street 1638 E. SOUTHERN AVE.
 City INDIPS. State IND.
 SUBJECT TO LOCAL ORDINANCE
 Date of Plans _____ Architect _____

We hereby propose to furnish the materials and perform the labor necessary for the completion of

BUILD 24X24 GARAGE TO CODE WALL
 WILL BE 16" INCH ON CENTER, RAFFER'S 24" INCH
 ON CENTER, CEILING JOIST'S WILL BE 4 FEET ON
 CENTER WILL HAVE A 6" INCH OVER HANG ALL AROUND
 ALSO INSTALL A 16X7 OVER HEAD DOOR AND 1
 36" INCH SERVICE ALSO PUT A WINDOW IN THE
 BACK WALL ALL MATERIALS FURNISHED BY US
 ALSO WILL RUN LIGHTING IN GARAGE
 GUARANTEE ON CONSTRUCTION OF GARAGE
 CHANGED GARAGE SIZE TO A 20X20 WE DID
 BUILD UP FLOOR FOR GROUND BUILD UP IN FRONT OF GARAGE

All material is guaranteed to be as specified, and the above work to be performed in accordance with the drawings and specifications submitted for above work and completed in a substantial workmanlike manner for the sum

with payments to be made as follows: 24,000.00 DOWN PAID 24,000.00
REST UPON COMPLETION BALANCE DUE IS

Any alteration or deviation from above specifications involving extra costs, will be executed only upon written orders and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance upon above work. Workmen's Compensation and Public Liability Insurance on above work to be taken out by

Respectfully submitted Donna M. McGlaughlin

Per CONTRACT PAID IN FULL

Note—This proposal may be withdrawn by us if not accepted within _____ days.

ACCEPTANCE OF PROPOSAL

The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Signature Donna M. McGlaughlin

Date 12-16-97

Signature _____

EXHIBIT

PROPOSAL

Eversole Construction

No.

Date

Sheet No.

Proposal Submitted To:

Name *DONNA M. MCGLAUGHLIN*
Street *1638 E. SOUTHERN AVE*
City *INDIPS* State *IND*
Phone *787-9071*

Work To Be Performed At:

Street *1638 E. SOUTHERN AVE*
City *INDIPS* State *IND*
Date of Plans *12-31-97* Architect *MADE*

We hereby propose to furnish the materials and perform the labor necessary for the completion of

*BUILD 24X24 GARAGE TO CODE WALLS
WILL BE 16" INCH ON CENTER, RAFFER'S 24 INCH
ON CENTER, CEILING JOISTS WILL BE 4 FEET ON CENTER
WILL HAVE A 6" INCH OVER HANG ALL AROUND AND
INSTALL A 16X7 OVER HEAD DOOR AND A 36" INCH
SERVICE ALSO PUT A WINDOW IN THE BACK WALL.
ALL MATERIALS FURNISHED BY US ALSO WILL
RUN LIGHTING IN GARAGE*

*This contract was altered by Eversole
Construction & I concede it not - Donna M. McGlaughlin
12/31/97*

All material is guaranteed to be as specified, and the above work to be performed in accordance with the drawings and specifications submitted for above work and completed in a substantial workmanlike manner for the sum of

with payments to be made as follows: *\$4,000 DOWN*

Dollars (\$ *4,000*)

Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance upon above work. Workmen's Compensation and Public Liability Insurance on above work to be taken out by

REST UPON COMPLETION

Respectfully submitted *Vern Eversole* CONSTR,
Per

Note-This proposal may be withdrawn by us if not accepted
within days

ACCEPTANCE OF PROPOSAL

The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

EXHIBIT

Signature *Donna M. McGlaughlin*

Signature

12-16-97

B

FORM 3850

DUPLICATE

MADE IN U.S.A.